

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**  
**NASHVILLE, TENNESSEE REGULATORY AUTH.**

In Re: Complaint of XO Tennessee, Inc. )  
Against BellSouth Telecommunications, )  
Inc. )  
Complaint of Access Integrated )  
Networks, Inc. Against BellSouth )  
Telecommunications, Inc. )

01 NOV 30 AM 9 01  
Docket No. 01-00868  
OFFICE OF THE  
EXECUTIVE SECRETARY

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**MOTION TO MAKE DOCUMENTS PUBLIC**

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Access Integrated Network, Inc. ("AIN") and XO Tennessee, Inc. ("XO") move, pursuant to paragraph eleven of the protective order entered in the above-captioned proceeding, that the documents filed by BellSouth Telecommunications, Inc. ("BellSouth") in response to Interrogatory No. 7 from the TRA staff and in response to Interrogatory No 5 from AIN and XO be made part of the public record. To the extent those documents contain customers' names and telephone numbers, XO and AIN do not object if BellSouth chooses to delete that information from the documents.

I. Interrogatory No. 7 from the Staff states:

Item 7. Provide all documents, including but not limited to, email, training materials, and internal correspondence, discussing free local telephone service offers to customers in Tennessee.

The documents, provided by BellSouth in response to this question consist of training materials describing the offering of two and three months of free telephone service, contract forms, completed contracts and letters and emails sent to potential customers describing the offer of free service.

None of this information qualifies as "proprietary" under the protective order which states that such information must be "trade secret, confidential research, development, financial statements," or otherwise "commercially sensitive."

First, the documents provided by BellSouth simply describe a publicly offered BellSouth marketing program. Much of the information was mailed, faxed, or delivered by telephone directly to customers, and therefore, cannot arguably be described as "proprietary." The material used to describe the program to BellSouth employees consists of summaries of the program's goals, marketing scripts, and examples of how the program works. Since BellSouth has been actively using this marketing material for several months, the company can hardly claim it is secret information.

Second, BellSouth itself has implicitly acknowledged that the offer of free telephone service described in these documents is contrary to the carrier's tariff and, therefore, this aspect of the marketing program has been suspended indefinitely. BellSouth should not be able to cover up an apparently illegal marketing plan by arguing that the documents describing the plan are "commercially sensitive." Evidence of illegal activity can never be legitimately considered "confidential information" pursuant to T.C.A. § 65-3-109, the only statute which give the TRA the power to keep documents confidential.<sup>1</sup>

II. Interrogatory No. 5 of AIN and XO asks:

5 Provide copies of all marketing materials, including telemarketing scripts, used to sell "BellSouth Select Business."

The documents provided in response by BellSouth consist of descriptions of the BellSouth Select program as well as other publicly offered BellSouth promotions. The documents also include marketing scripts. All of the information in the documents is intended to be provided to customers or to BellSouth employees in order to help them explain the program to

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<sup>1</sup> To the contrary, T.C.A. § 65-3-119(b) requires the TRA to report to the District Attorney General evidence of unjust discrimination as alleged in these complaints and corroborated in these discovery documents. The TRA, of course, could not fulfill that duty without disclosing the documents.

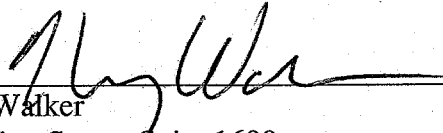
customers. By definition, any information which is, or could be, shared with members of the public cannot be properly considered as proprietary information.

For these reasons, AIN and XO ask that the documents described above be made part of the public record in this proceeding, AIN and XO do not object if BellSouth wishes to delete customers' names and telephone numbers.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: \_\_\_\_\_

  
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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via fax or hand delivery and U.S. mail to the following on this the 30th day of November, 2001.

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